

NEBRASKA ADMINISTRATIVE CODE

TITLE 429, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1  
NEBRASKA STATE TREASURER

RULES AND REGULATIONS FOR THE NEBRASKA EDUCATIONAL SAVINGS PLAN  
TRUST

Issue Date: 11/19/2001

01-386837.02

NEBRASKA ADMINISTRATIVE CODE

TITLE 429 – NEBRASKA EDUCATIONAL SAVINGS PLAN TRUST

CHAPTER 1 – RULES AND REGULATIONS FOR THE NEBRASKA EDUCATIONAL SAVINGS PLAN TRUST

ALPHABETICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	SECTIONS
Administrative Fees and Reporting	85-1804, 85-1807	010
Beneficiary Eligibility	85-1804, 85-1806	004
Cancellation and Distribution of Refunds	85-1804, 85-1808	007
Change of Beneficiary	85-1804, 85-1806	006
Code Compliance & Interpretations	85-1803, 85-1804	013
Contributions	85-1804, 85-1806	005
Definitions	85-1802	002
Distributions	85-1804, 85-1808	008
Endowment Fund	85-1807	011

Investment Policy	85-1807	009
No Pledging of Trust Funds as Security	85-1809	012
Participant Eligibility and Designation	85-1804, 85-1806	003
Purpose	85-1803	001

## NEBRASKA ADMINISTRATIVE CODE

### Title 429 – Nebraska Educational Savings Plan Trust

#### CHAPTER 1 RULES AND REGULATIONS FOR THE NEBRASKA EDUCATIONAL SAVINGS PLAN TRUST

**001** **Purpose.** The purposes of these Rules and Regulations are to establish procedures for the operation and administration of the Nebraska Educational Savings Plan Trust as established by LB1003 of the Ninety-Sixth Legislature and signed into law by the Governor of Nebraska on April 12, 2000 to be codified at Neb.Rev.Stat. Sections 85-1801 to 85-1814; to describe the rights and responsibilities of contributors to the Trust; and to ensure that the Trust conforms with the federal and state statutes and regulations governing qualified tuition programs.

**002** **Definitions.**

**002.1** **Account** means the separate account created by a Participation Agreement entered into between each Participant and the Trust. Unless otherwise allowed by the Code and Act, each Account shall only have one Participant and one Beneficiary.

**002.2** **Act** means the Nebraska Legislative Act authorizing the Trust and the Program.

**002.3** **Administrative Fund** means the administrative fund created in section 7 of the Act.

**002.4** **Beneficiary** means the individual designated by a Participant, or the individual who is designated as the new Beneficiary when Beneficiaries are changed, who (in either case) meets all of the requirements of the Code, the Act, and these Rules and Regulations.

**002.5** **Cash** means lawful United States currency and shall include but not be limited to cash, checks (other than travelers checks), money orders, payroll deductions, automatic contribution plans, and electronic funds transfers, or similar means of payment accepted by the Trustee. Cash shall not include real or non-cash personal property.

**002.6 Code** means the present Internal Revenue Code and regulations of the United States.

**002.7 Contribution** means Cash deposited into an Account established under the Act for the benefit of a Beneficiary.

**002.8 Distribution** means any disbursement from an Account established under the Act.

**002.9 Endowment Fund** means the Endowment Fund created in section 7 of the Act.

**002.10 Forms** means forms and notices referenced in these Rules and Regulations, copies of which are kept current, and are available at the office of the State Treasurer at State Capitol Room 2003, Lincoln, NE 68509 / 402-471-2455 / or online at [www.treasurer.org](http://www.treasurer.org).

**002.11 Higher Education Costs** means the certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an Institution of Higher Education. Reasonable room and board expenses, based on the minimum amount applicable for the Institution of Higher Education during the period of enrollment, shall be included as a Higher Education Cost for those students enrolled on at least a half-time basis, to the extent allowed by the Code and the Act.

**002.12 Institution of Higher Education** means an institution described in the Code provisions governing qualified State tuition programs and which is eligible to participate in the United States Department of Education's student aid programs.

**002.13 Maximum Contribution Limit** means the total amount established by the Trustee from time to time (and reviewed at least once each calendar year) that a Beneficiary may be estimated to expend for Higher Education Costs. Documentation supporting the amount of the Maximum Contribution Limit will be on file at the office of the State Treasurer. (The Maximum Contribution Limit is \$250,000, as of September 20, 2001).

**002.14 Member of Family** means with respect to any designated Beneficiary (a) the spouse of such Beneficiary; (b) an individual who bears a relationship to such Beneficiary which is described in paragraphs (1) through (8) of section 152(a) of the Code; (c) any first cousin of such Beneficiary; and (d) the spouse of any individual described in subparagraph (b) of

this subsection.

**002.15 Minimum Contribution Limit** means the minimum amount required to be invested per Beneficiary per year in a year in which a Participant is making a Contribution. (The Minimum Contribution Limit is \$ 0.00, as of April 17, 2001).

**002.16 Nebraska Institution of Higher Education** means an Institution of Higher Education which is located in the state of Nebraska.

**002.17 Non-Qualified Withdrawal** means any Distribution from an Account other than: (1) a Qualified Withdrawal; (2) a withdrawal made on account of the death or disability of the Beneficiary; (3) a withdrawal made on account of the receipt of a scholarship or allowance or payment described in Section 25A(g)(2) received by the Beneficiary to the extent the amount of the Distribution does not exceed the amount of such scholarship, allowance, or payment; or (4) a Qualified Rollover Distribution.

**002.18 Participant** means an individual, an individual's legal representative, or any other legal entity authorized to establish an Account under the Code and the Act and who has entered into a Participation Agreement. A Participant need not be a resident of the State of Nebraska.

**002.19 Participation Agreement** means a legally binding and executed agreement, in a form and content approved by the Trustee, between a Participant and the Trust entered into pursuant to the Act.

**002.20 Program** means the Nebraska Educational Savings Plan Trust as operated and administered in accordance with the Code and the Act.

**002.21 Refund Penalty** means the amount assessed by the Trustee, as required by the Code, for any Non-Qualified Withdrawal. For taxable years beginning after December 31, 2001, the Refund Penalty shall be zero percent of any Distribution. For prior taxable years, the Refund Penalty is ten percent of the amount of any Distribution which is a Non-Qualified Withdrawal which is attributable to investment earnings.

**02.22 Qualified Rollover Distribution** means a Distribution or transfer from an Account that is re-deposited within sixty (60) days into either (i) another Account in the Trust for the

benefit of another Beneficiary who is a Member of the Family of the original Beneficiary, or (ii) an account in another qualified tuition plan for the benefit of the same or another Beneficiary.

**002.23 Qualified Withdrawal** means a withdrawal from an Account that is used to pay the Higher Education Costs of the Beneficiary.

**002.24 Trust** means the Nebraska Educational Savings Plan Trust created under section 4 of the Act.

**002.25 Trustee** means the Nebraska State Treasurer.

### **003 Participant Eligibility and Designation.**

**003.1 Participant Eligibility and Designation** A Participant may be anyone who has a valid Social Security number or U.S. tax identification number. The Participant shall designate the name and date of birth of the Beneficiary and provide all other documentation and certifications requested in the Participation Agreement.

**003.2 Participation Agreement** Each Participant must agree to be bound by a Participation Agreement that specifies the terms and conditions under which the Participant shall participate in the Program. To the extent allowed by the Code and the Act, a Participation Agreement may be amended by the Trustee upon prior notice to the Participant and may also be amended by the Participant to increase or decrease the level of Contributions and change the designation of a Beneficiary.

**003.3 Participant Changes** To the extent permitted by the Code, a Participant may transfer ownership of an Account to another person or entity eligible to be a Participant under the Code and the Act. Any such change shall not be effective until the Trust has received notice of the transfer and the new Participant has agreed to be bound by a Participation Agreement.

### **004 Beneficiary Eligibility.**

**004.1 Beneficiary Eligibility** A Beneficiary may be anyone who has a valid Social Security number or U.S. tax identification number. The Program has no minimum or maximum age limitations. There is no limit on the number of Accounts that may be opened for a single Beneficiary by different Participants; however, the Maximum Contribution Limit will apply in the aggregate to all Accounts for the same Beneficiary.

**005 Contributions.**

**005.1 Contributions & Maximum Contribution Limit** All Contributions to Accounts shall be in Cash. Contributions to an Account may be made through an established periodic payment plan, through payroll deductions and other similar automatic deduction plans, through one or more lump-sum deposits and in any other means allowed by the Code, the Act and the Participation Agreement. Contributions may be made at any time, provided that (i) the total amount of Contributions to all Accounts maintained within the Trust for the same Beneficiary may not exceed the Maximum Contribution Limit, and (ii) no additional Contributions may be made for the benefit of a particular Beneficiary when the fair market value of all accounts maintained within the Trust for that Beneficiary plus the tendered Contribution exceeds the Maximum Contribution Limit.

**005.2 Not required every year** A Participant shall not be required to make an annual Contribution on behalf of a Beneficiary. However, if a Participant makes a Contribution, such Contribution shall comply with the Minimum Contribution Limit and the Maximum Contribution Limit.

**006 Change of Beneficiary.**

**006.1 Change of Beneficiary** A Participant may change a Beneficiary as allowed by the Code and the Act, provided that the Participant complies with section 006.2 of these Rules and Regulations.

**006.2 Request** A Participant may request that a Beneficiary be substituted by submitting to the Trustee a notice to change Beneficiary. The notice to change Beneficiary shall include such information as required by the Trustee to insure compliance with the Code and Act.

**007 Cancellation and Distribution of Refunds.**



**007.1 Cancellation** A Participant may at any time cancel a Participation Agreement, without cause, by submitting to the Trustee a notice to terminate agreement.

**007.2 Distribution of Refund** If the Participation Agreement is canceled, the Participant is entitled to a refund. The refund shall be mailed or otherwise sent to the Participant within ninety days after receipt by the Trust of the notice to terminate agreement. The amount of the refund shall be the principal amount of all Contributions (less any applicable fees or expenses) made by the Participant plus the actual Program fund investment income earned on the Contributions, less any losses incurred on the investment, but not Endowment Fund monies.

**007.3 Death or Disability of the Beneficiary, Receipt of a Scholarship** In the event of cancellation of a Participation Agreement for any of the reasons set forth in this subsection, the Participant is entitled to receive the principal amount of all Contributions (less all applicable fees and expenses) made by the Participant under the Participation Agreement plus the actual Program Fund income earned on the Contributions, less any losses incurred on the investment, but no Endowment Fund monies. Said refund shall be available upon the occurrence of, 1) death of the Beneficiary, 2) disability of the Beneficiary within the meaning of section 72(m)(7) of the Code, or 3) receipt of a scholarship, allowance, or payment described in section 25A(g)(2) of the Code by the designated Beneficiary to the extent the amount of the cancellation refund does not exceed the amount of the scholarship, allowance, or payment.

**007.4 Documentation for Certain Distributions**

**007.4.1** Before a Distribution is made due to the death of a Beneficiary, the Participant must provide the Trustee a copy of the Beneficiary's death certificate or other proof of death acceptable under Nebraska law.

**007.4.2** Before a Distribution is made due to the disability of a Beneficiary, the Participant must provide the Trustee with such proof of disability as may be required by the Code.

**007.4.3** Before a Distribution is made due to the receipt of a scholarship, allowance or payment, as described in Section 007.3, above, the Participant must provide the Trustee written proof of the receipt by the Beneficiary of such scholarship, allowance

or payment, including the amount thereof.

**008 Distributions.**

**008.1 Method of Distributions** The following four methods of Distribution shall be intended as being used to pay qualified Higher Education Costs : (1) the Distribution is made directly to an Institution of Higher Education; (2) the Distribution is made in the form of a check payable to both the designated Beneficiary and the Institution of Higher Education; (3) the Distribution is made after the designated Beneficiary submits such evidence as the Trustee may require, if any, to show that the Distribution is a reimbursement for payment of Higher Education Costs that the designated Beneficiary has already paid; or (4) the designated Beneficiary certifies prior to the Distribution that the Distribution will be expended for his or her Higher Education Costs within a reasonable time after the Distribution and said Beneficiary provides such evidence as the Trustee may require, if any, of the payment of the Higher Education Costs within 30 days of the Distribution. If the Beneficiary elects option (4), to the extent required by the Code and Act, the Participant must provide prompt substantiation of the payment of Higher Education Costs and the Trustee will retain an Account balance that is large enough to collect any Refund Penalty and other fees and charges that might be imposed if valid substantiation is not timely received by the Trustee. The Trustee may allow such other Distribution methods as may be allowed by the Code from time to time.

**008.2 Non-Qualified Withdrawals; Penalties** A Participant may request a Non-Qualified Withdrawal by submitting a completed non-qualified withdrawal request to the Trustee. If required by the Code and the Act, a Refund Penalty will be assessed on the Non-Qualified Withdrawal and then transferred to the Administrative Fund

**008.3 Distributions Reported** All Distributions from an Account shall be reported to the appropriate taxing authorities for the tax year in which such payments were made.

**009 Investment Policy.**

**009.1 Investment Policy** Contributions to an Account will be invested by the State Investment Officer pursuant to policies established by the Nebraska Investment Council.

**010 Administrative Fees and Reporting.**

**010.1 Transfers to Administrative Fund** To the extent allowed by law, earnings of the Trust may be utilized by the Trustee to pay the actual and reasonable costs of administering, operating, and maintaining the Trust. The assets of the Trust shall not be transferred or used by the State of Nebraska for purposes other than the purposes of the Trust.

**010.2 Quarterly Statement** At the close of each calendar quarter, the Trustee shall provide each Participant a statement listing the beginning balance, Contributions, withdrawals, and closing balance of the Participant's Account.

**011 Endowment Fund.**

**011.1 Earmarking of Endowment Fund** Each Beneficiary under a Participation Agreement shall receive a pro rata interest in the Endowment Fund as computed in accordance with the terms of the Act each year after any transfers to the Administrative Fund have been made.

**011.2 Non-vesting of Endowment Funds** No rights to any money derived from the Endowment Fund shall exist if money payable under the Participation Agreement is paid to an Institution of Higher Education which is not a Nebraska Institution of Higher Education.

**011.3 Distributions to be used at a Nebraska Institution of Higher Education** When Distributions for the Beneficiary begin, the Beneficiary's pro rata share of the Endowment Fund shall be available for Distribution provided the Beneficiary's Higher Education Costs are incurred at a Nebraska Institution of Higher Education.

**011.4 Disclosure of Non-Vesting** Each Participation Agreement shall disclose to the Participant that all funds in the Endowment Fund are nonvested and shall remain property of the Trust until disbursed pursuant to Section 008.

**012 No Pledging of Trust Funds as Security.**

**012.1 No Pledging** Under no circumstances may any interest in an Account or the Trust be used as security for a loan.

## **013**   **Code Compliance & Interpretations**

**013.1**   **Code Requirements** Notwithstanding anything in these Rules and Regulations to the contrary, the Program and the Trust shall at all times be administered in full compliance with the Code and Act. To the extent necessary to maintain compliance with the Code and Act, the Trustee shall interpret these Rules and Regulations in a manner that insures compliance with the Code and Act. Any part of these Rules and Regulations that is deemed to conflict with the Code or the Act shall be of no effect. The Trustee shall exercise all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the Act pertaining to the administration, operation, and maintenance of the Trust and Program.

**013.2**   **Incorporation by Reference** The applicable provisions of the Code, including all regulations promulgated thereunder are incorporated herein by reference as if fully set forth herein.